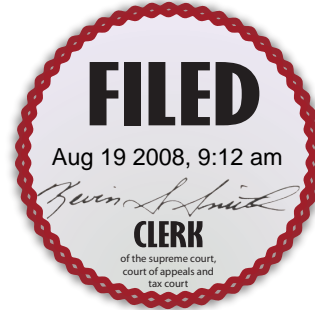


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT:

DOUGLAS D. MARTZ
Marion, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

ZACHARY J. STOCK
Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

RONALD FIELDS,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

)
)
)
)
)
)
)
)
)
)

No. 27A02-0802-CR-145

APPEAL FROM THE GRANT SUPERIOR COURT
The Honorable Natalie R. Conn, Judge
Cause No. 27D03-0708-CM-651

August 19, 2008

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

Ronald Fields (“Fields”) was convicted in Grant Superior Court of Class A misdemeanor battery of a law enforcement officer and Class A misdemeanor resisting a law enforcement officer. He was sentenced to an aggregate term of one year. On appeal, Fields presents the following issue: whether the failure to record and archive surveillance video in a prison violates his due process rights under both federal and state constitutions.

We affirm.

Facts and Procedural History

On August 16, 2007, Fields was incarcerated in cellblock 4B of the Grant County Jail. While there, a fight erupted between inmates. The guards, Deputies Patrick Kolb (“Deputy Kolb”) and William Barcomb (“Deputy Barcomb”) responded and entered the area where the fight was occurring. Deputy Kolb entered first with Deputy Barcomb coming in behind.

Deputy Barcomb ordered the inmates to the floor. While many inmates complied, Fields continued to fight with another inmate. The inmate fell to the floor and Deputy Kolb began to handcuff him. Fields ran toward Deputy Kolb and the inmate with a mop wringer. Deputy Kolb ordered Fields to stop. Fields pulled the mop wringer back as if to swing. Fields did not stop on Deputy Kolb’s order and began to swing the wringer. Fields had already struck Deputy Kolb on the left hand. Deputy Barcomb then hit Fields with a taser and Fields fell to the floor. At the time of the incident, the cellblock was under surveillance from two cameras. However, the video feeds from the cameras were not recorded.

On August 23, 2007, the State charged Fields with Class A misdemeanor battery of a law enforcement officer and Class A misdemeanor resisting a law enforcement officer. Fields filed a pro se motion to produce evidence on September 17, 2007. Fields then filed a supplemental motion for discovery on November 13, 2007. No video recording was ever turned over to Fields through discovery.

A bench trial was set for on January 11, 2007. On that day, before trial, Fields filed a motion to dismiss based on the State's failure to turn over a videotape of the altercation that occurred on August 16, 2007. Fields presented testimony that some areas of the jail were videotaped and recorded. Also, several inmates in the jail at the time of the altercation testified that they believed that they were being videotaped. However, testimony from jail guards established that the cameras in cellblock 4B did not record but merely provided a video feed for the guards to view inmates. The trial court heard evidence and denied the motion after determining that no videotape existed and had never existed; therefore the State could not provide a videotape of the altercation on August 16, 2007 in discovery. The trial court proceeded with the trial, found Fields guilty on both counts, and sentenced him to an aggregate term of one year. Fields appeals.

Discussion and Decision

Fields argues that the State's failure to record surveillance video feeds in the Grant County Jail during an inmate fight violated his due process rights under both federal and state constitutions.¹ The trial court denied Fields's motion to dismiss when it determined that the video recording did not exist and had never existed. Fields is now appealing

¹ While the issues presented at the trial court level and the appellate level do not match exactly, they do address similar issues.

from a negative judgment and must prove by a preponderance of the evidence all facts necessary to support his motion to dismiss. Johnson v. State, 810 N.E.2d 772, 775 (Ind. Ct. App. 2003), trans. denied. On an appeal from a negative judgment, we will reverse the trial court only if the evidence is without conflict and leads inescapably to the conclusion that the party was entitled to dismissal. Id.

No evidence has been presented that would show that a recording of the incident in question ever existed. In fact, testimony by Deputy Kolb supports the State's position that a recording never existed. All of the cases cited by Fields relate to evidence that was at one point in existence. See Illinois v. Fisher, 540 U.S. 544 (2004) (police destroyed cocaine prior to prosecution for cocaine possession in accord with established procedures); United States v. Bagley, 473 U.S. 667 (1985) (referred to disclosure of impeachment evidence such as plea agreements); California v. Trombetta, 467 U.S. 479 (1984) (duty to preserve evidence applied to breath samples of suspected drunk drivers); Johnson v. State, 507 N.E.2d 980 (Ind. 1987) (videotapes of defendant's booking were erased and reused pursuant to routine). In the case before us, however, the video cameras in cellblock 4B merely provided a view of the cellblock and did not have the ability to record. No recording existed so the State cannot be held to have violated discovery orders because they did not provide to Fields a video that did not exist.

To overcome the fundamental problem of a videotape that never was, Fields attempts to place upon the State a duty to record the happenings in all parts of the prison as part of its duty to protect inmates. The Department of Correction does have a duty "to take reasonable precautions to preserve the life, health, and safety of prisoners." Reed v.

State, 479 N.E.2d 1248, 1254 (Ind. 1985). We have noted in Cole v. Indiana Dep't of Correction, that prisons are dangerous places and that the DOC cannot protect all inmates from all other inmates at all times. 616 N.E.2d 44, 45 (Ind. Ct. App. 1993). Fields seeks to expand the duty of the State to require videotaping capability in all Indiana prisons. Fields has not provided any support for such an expansion of the State's duty and we decline to do so.

Fields has failed to show that the evidence is conflicted on the existence of a videotape recording of the altercation or the presence of a duty to videotape all areas of a prison. None of Fields's arguments lead inescapably to the conclusion that he is entitled to a dismissal. Accordingly, we conclude that the trial court did not err when it denied Fields's motion to dismiss.

Affirmed.

BAKER, C.J., and BROWN, J., concur.